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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL P. REYMANN,

Defendant and Appellant.

B208091

(Los Angeles County
Super. Ct. No. SA057087)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Robert P. O'Neill, Judge. Affirmed with directions.

Cheryl Barnes Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan Sullivan Pithey and Catherine Okawa Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Michael P. Reymann appeals from a judgment entered after a jury found him guilty of count 1, assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1));¹ count 2, misdemeanor battery (§ 242); and count 3, hit and run resulting in injury (Veh. Code, § 20001, subds. (a) & (b)(1)).² The jury found not true the allegation that as to count 1, appellant personally inflicted great bodily injury within the meaning of section 12022.7, subdivision (a).

The trial court sentenced appellant to state prison for the midterm of two years as to count 3, the principal term. The trial court imposed and stayed the low term of two years on count 1 and six months in county jail on count 2 pursuant to section 654.³

Appellant contends that: (1) the evidence was insufficient to prove knowledge of injury as required for a violation of Vehicle Code section 20001, subdivisions (a) and (b)(1); and (2) the trial court abused its discretion by imposing a state prison term and a midterm sentence. We affirm with directions to the trial court to correct the abstract of judgment.

FACTS AND PROCEDURAL HISTORY

On June 30, 2005, Kenneth Simmons (Simmons) was driving his motorcycle in heavy traffic on Sunset Boulevard. He drove between traffic lanes next to appellant's

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Appellant was found not guilty of count 4, attempted premeditated murder (§§ 187, subd. (a), 664) and the lesser included offense of attempted voluntary manslaughter (§§ 192, subd. (a), 664). Appellant was charged in the amended information with count 2, battery on a person resulting in serious bodily injury (§§ 242, 243, subd. (d)), but was convicted of the lesser included offense of misdemeanor battery (§ 242). Appellant was charged with count 3, leaving the scene of an accident (Veh. Code, § 20001, subd. (a)) but was convicted of the lesser included offense of hit and run resulting in injury (Veh. Code, § 20001, subds. (a) & (b)(1)).

³ The abstract of judgment incorrectly reflects that appellant was sentenced to the low term of two years on count 1 as the principal term and that imposition of sentence was stayed pursuant to section 654 on count 3.

Mustang in order to pass him. Appellant pulled up alongside Simmons at a traffic light, screaming and cursing at him, and made a rude gesture with his finger. When the traffic light changed, Simmons drove forward. Appellant pursued him and repeatedly swerved toward him, almost striking him. Appellant drove into oncoming traffic in order to pursue Simmons. Appellant continued to drive alongside Simmons, screaming and rudely gesturing at him. In an attempt to evade appellant, Simmons ran a red light. Simmons then drove down a side street and parked in the parking lot of a church, hoping that appellant would pass by. Appellant passed the church, spotted Simmons, stopped and turned into the parking lot. Appellant jumped out of the car, cursing, and threatened to kill Simmons. Simmons, who had removed his helmet, told appellant to relax and chill out. Appellant then hit Simmons in the face. When Simmons, who had fought professionally, took a fighting stance, appellant returned to his car. Appellant drove a short distance away, made a U-turn, drove back toward Simmons, and swerved towards him. Simmons, who had worked as a stuntman, jumped up. He rolled over the hood of the car and landed on the ground. Steven Toland saw appellant driving fast, make a U-turn and swerve to hit Simmons, who rolled over the hood of the car. Toland wrote down the license plate of the car as it sped away and called 911. Arnulfo Salinas saw Simmons fly over the hood of appellant's car. Salinas is a Mustang aficionado and testified that after appellant hit Simmons, he drove in Salinas's direction at the rate of 35 to 40 miles an hour and that he was probably driving faster when he actually hit Simmons. Appellant drove away, weaving in and out of traffic. Salinas's passenger wrote down appellant's license plate. Both Toland and Salinas rendered aid to Simmons and waited for the police and ambulance.

Simmons suffered a laceration to the back of the head and scrapes and cuts to his arms. He had suffered from mini-seizures prior to the collision. After the collision his seizures increased in intensity. He spent three days in the hospital recovering from his injuries.

Appellant testified in his defense that Simmons cut off other drivers, asked him "what the fuck [he was] looking at," blinded him by spitting in his eyes, and scraped his

driver's side fender. Appellant testified that he pursued Simmons in order to obtain his license plate number. When Simmons reached into his vest and said "I've got something better for you, motherfucker," appellant returned to his car, drove a short distance away and made a U-turn. He drove back toward Simmons and struck him at 10 miles an hour when Simmons moved into the path of his car. As he drove away, he could see from his rear view mirror that Simmons was glaring at him and getting up. Appellant did not believe Simmons was injured, but was still capable of pursuing him, so he drove away to his sister's house in Santa Clarita. When appellant and his sister examined appellant's car they noticed only minor scratches and no damage to the hood.

DISCUSSION

I. There was sufficient evidence that appellant knew that Simmons was injured in the accident

Appellant contends that the evidence was insufficient to prove that appellant knew the accident resulted in injury to Simmons pursuant to Vehicle Code section 20001, subdivision (a) because no witness or expert offered to prove that appellant's car was damaged; appellant and his sister saw only minor scratches on the car's bumper and lower passenger side; the jury did not believe that Simmons was seriously injured; appellant was acquitted of personally inflicting great bodily injury; appellant was found not guilty of committing battery with serious bodily injury; and medical records indicate only that Simmons was injured on the back of the head, which appellant could not have noticed.

"The role of an appellate court in reviewing the sufficiency of the evidence is limited. The court must 'review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.] [¶] . . . But it is the *jury*, not the appellate court, which must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] Therefore, an appellate court may not substitute its

judgment for that of the jury.” (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138-1139.) We do not reweigh the evidence; even if the circumstances “might reasonably be reconciled with a contrary finding[, this] would not warrant reversal of the judgment.” (*People v. Proctor* (1992) 4 Cal.4th 499, 529.)

Vehicle Code section 20001, subdivision (a) provides that: “(a) The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.” As pertinent here, Vehicle Code section 20003, subdivision (a) requires any driver to give his name and address to the person struck and to the police at the scene of the accident, and if necessary, assistance to the injured person.

“Section 20001 has long been deemed to impose a knowledge requirement which requires proof the accused knew or was aware that (1) he or she was involved in an accident and (2) the accident resulted in injury to another.” (*People v. Harbert* (2009) 170 Cal.App.4th 42, 45.)

The driver’s constructive knowledge of the injury to the victim is sufficient to support a conviction because a “driver who leaves the scene of the accident seldom possesses actual knowledge of injury; by leaving the scene he forecloses any opportunity to acquire such actual knowledge We therefore believe that criminal liability attaches to a driver who knowingly leaves the scene of an accident if he actually knew of the injury or if he knew that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person.” (*People v. Holford* (1965) 63 Cal.2d 74, 80; *People v. Harbert, supra*, 170 Cal.App.4th at p. 45.)

Here, the evidence supported the jury’s conviction of appellant for a violation of Vehicle Code section 20001, subdivision (b)(1). Constructive knowledge of personal injury can be imputed to the driver of the vehicle where the seriousness of the collision would lead a reasonable person to assume there must have been resulting injuries. (*People v. Carter* (1966) 243 Cal.App.2d 239, 241.) In *People v. Ryan* (1981) 116 Cal.App.3d 168, 178, the defendant struck the victim, who was clearly visible. The

victim's impact with the car caused a loud noise and the victim was propelled 30 feet in front of the car. After hitting the victim, the defendant backed up and maneuvered around the victim's body and fled the scene. The court concluded the evidence was sufficient to prove that the defendant knew that he had seriously injured the victim and had made a desperate attempt to flee the scene in order to avoid the consequences of his action. (*Id.* at pp. 180-181.)

Here, appellant hit Simmons in the face with his hand and drove away. He then made a U-turn in his Mustang and swerved to strike Simmons. Not wearing a helmet, Simmons hit the hood of the car, rolled over it, and fell to the ground. One witness testified that after appellant hit Simmons, he drove toward the witness at 35 to 40 miles per hour, and that he was probably driving faster when he actually hit Simmons. The jury could well conclude that appellant knew he had injured Simmons and then quickly drove away from the scene, weaving in and out of traffic, to avoid the consequences of his action. By arguing that Simmons put himself in appellant's path, that there was no evidence of damage to his car, and that he could not have seen the injury to the back of Simmons's head, appellant requests that we reweigh the evidence, which we cannot do. Moreover, the jury's acquittal of appellant as to count 2, battery with serious bodily injury, does not negate the jury's finding that appellant knew that Simmons was injured and was required to stop under Vehicle Code section 20001.

We conclude the jury's verdict was supported by substantial evidence.

II. The trial court did not abuse its discretion by imposing a state prison term and sentencing appellant to the midterm on count 3

Appellant contends that the trial court abused its discretion in sentencing appellant to a state prison term and to the midterm rather than the low term on count 3, because, at 41 years old, he had never been arrested or suffered a criminal conviction prior to his conviction in this case, appellant was supported by family and friends, and appellant had served in the military. He also contends that the jury flatly rejected the assumption made in the probation report that appellant tried to kill Simmons. We find that the trial court did not abuse its discretion.

The trial court has broad discretion to determine whether a defendant is suitable for probation and what conditions should be imposed. (§ 1203, subd. (b)(1); Cal. Rules of Court, rule 4.414.) Section 1203, subdivision (e) provides that probation shall not be granted to a person who attempts to use a deadly weapon upon a human being except in unusual cases. “The standard for reviewing a trial court’s finding that a case may or may not be unusual is abuse of discretion.” (*People v. Superior Court (Du)* 5 Cal.App.4th 822, 831.) “Our function is to determine whether the respondent court’s order is arbitrary or capricious, or “exceeds the bounds of reason, all of the circumstances being considered.” [Citation.] The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” (*Id.* at p. 831.)

Among other factors, California Rules of Court, rule 4.413(c)(2) permits the trial court to take into consideration the following in order to determine whether a case is unusual for purposes of determining a defendant’s eligibility for probation: whether the defendant participated in the crime under great provocation and has no recent record of committing crimes of violence, and whether the defendant is youthful or aged and has no significant record of prior criminal offenses. Here, the trial court considered all of the evidence presented at trial, the probation officer’s report, documents and statements submitted on appellant’s behalf, and appellant’s lack of criminal record in concluding that probation was not appropriate and the unusual circumstances set forth in section 1203, subdivision (e) did not exist. The trial court noted that appellant’s anger and extreme lack of self-control made him dangerous to drivers and pedestrians. The trial court found that appellant was involved in a major road rage incident where he had ample opportunity to reflect and reconsider his course of action. Nevertheless, appellant continued to pursue the victim through crowded streets. Although he was deterred momentarily by Simmons’s fighting stance, he drove away only to make a U-turn and

swerve to hit Simmons. The trial court noted that appellant continued his dangerous behavior by weaving in and out of crowded traffic when he fled the scene.

Similarly, the trial court took into consideration all of the circumstances of the offense when it imposed the midterm of two years on count 3. We conclude that the trial court did not abuse its discretion in imposing a state prison term on appellant and sentencing him to the midterm as to count 3. We note however, that the abstract of judgment erroneously reflects that the trial court sentenced appellant to two years on count 1 as the principal term and that the sentence of the midterm of two years on count 3 is stayed. Therefore we shall order the trial court to correct the abstract of judgment to conform to the trial court's pronouncement of judgment. (*People v. Mitchell* (2001) 26 Cal.4th 181, 188.)

DISPOSITION

The trial court is ordered to correct the abstract of judgment to reflect that the midterm of two years is imposed on count 3 as the principal term and that the sentence of two years imposed on count 1 and the sentence of six months in county jail on count 2 are stayed pursuant to section 654. The trial court shall send a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ